

IJH LAW

Ignacio J. Hiraldo (State Bar No. 354826)
1100 Town & Country Road Suite 1250
Orange, CA 92868
E. ijhiraldo@ijhlaw.com
T. 657.200.1403

Counsel for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

RHIANNA ORTENBERG, individually
and on behalf of others similarly
situated,

Plaintiff,

v.

SANTA BARBARA CORPORATE
FITNESS, INC.,

Defendant.

No. 2:24-cv-10470

CLASS ACTION COMPLAINT

**COMPLAINT FOR VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT, 47 U.S.C. §§ 227, ET SEQ.**

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Rhianna Ortenberg brings this class action against Defendant Santa Barbara Corporate Fitness, Inc. d/b/a Gold's Gym SoCal and alleges as follows upon personal knowledge as to Plaintiff and Plaintiff's own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff's attorneys.

NATURE OF THE ACTION

1. This is a putative class action pursuant to the Telephone Consumer Protection Act, 47 U.S.C. §§ 227, et seq. (the "TCPA").

2. To promote its goods and services, Defendant engages in unsolicited text messaging and continues to text message consumers after they have opted out of Defendant's text messages.

3. Through this action, Plaintiff seeks injunctive relief to halt Defendant's unlawful conduct, which has resulted in the invasion of privacy, harassment, aggravation, and disruption of the daily life of thousands of individuals. Plaintiff also seeks statutory damages on behalf of Plaintiff and members of the Class, and any other available legal or equitable remedies.

JURISDICTION AND VENUE

4. This Court has federal question subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §§ 227, *et seq.* ("TCPA").

5. The Court has personal jurisdiction over Defendant and venue is proper in this District because Defendant directs, markets, and provides its business activities to this District, and because Defendant's unauthorized marketing scheme was directed by Defendant to consumers from this District.

PARTIES

6. Plaintiff is now, and was at all relevant times, a citizen and resident of Los Angeles County, California.

7. Plaintiff is now, and was at all relevant times, an individual and a called party under the TCPA in that Plaintiff was the regular user of cellular telephone number that received Defendant's unwanted messages.

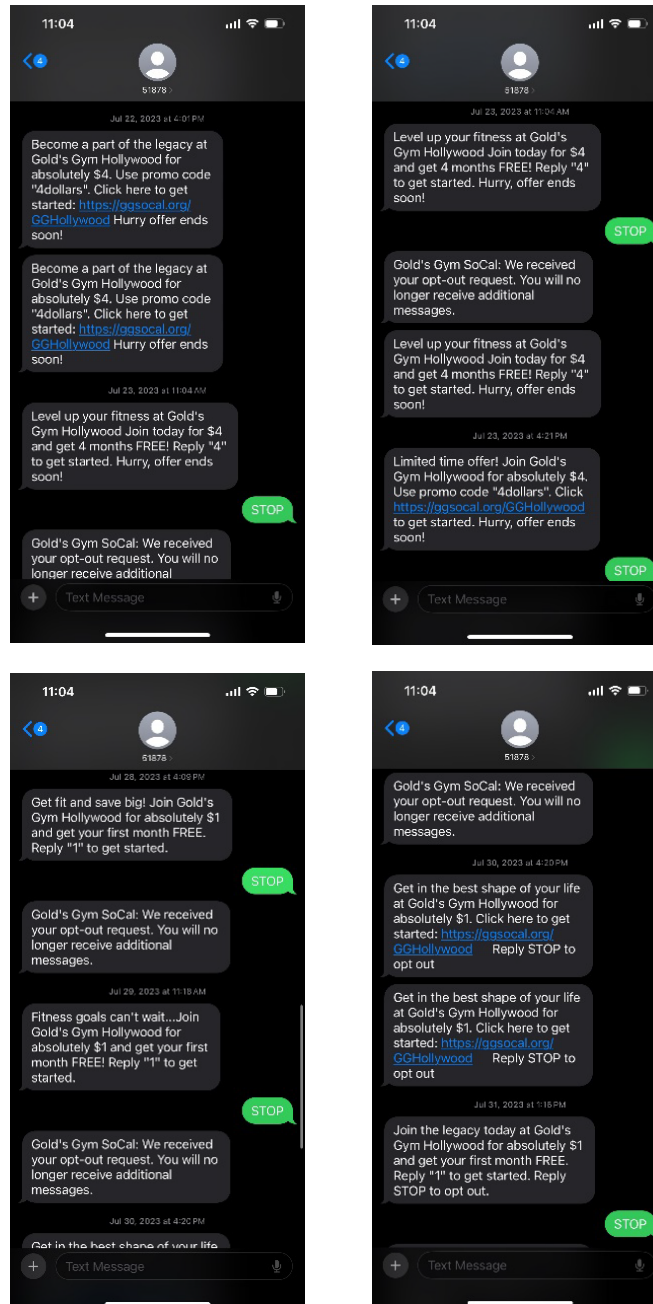
8. Defendant is now, and was at all relevant times, a California corporation with its principal place of business in Northridge, California.

9. Unless otherwise indicated, the use of Defendant's name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, vendors, and insurers of Defendant.

FACTS

10. Defendant operates health and fitness gyms under the Gold's Gym brand and engages in text message marketing to promote its goods and services.

11. Since on or about July 23, 2023, Defendant has caused multiple text messages to be transmitted to Plaintiff's cellular telephone number ending in 9130 (the "9130 Number") after "stop" instructions by Plaintiff, including, but not limited to, those depicted below:



1 12. As depicted above, Plaintiff first requested for Defendant to stop contacting
2 her on July 23, 2023 by texting “STOP” in response to Defendant’s text message.

3 13. Defendant responded to this stop request by texting “Gold’s Gym SoCal:
4 We received your opt-out request. You will no longer receive additional messages.”

5 14. Despite this, Defendant sent Plaintiff additional text messages on July 23,
6 2023, July 28, 2023, July 29, 2023, July 30, 2023, and July 31, 2023.

7 15. During this time, Plaintiff requested that Defendant stop sending her text
8 messages on July 28, 2023, July 29, 2023, and July 31, 2023.

9 16. As demonstrated by the above screenshots, the purpose of Defendant’s text
10 messages was to solicit the sale of consumer goods and/or services.

11 17. As demonstrated by the above screenshots, the purpose of Defendant’s text
12 messages was to advertise, promote, and/or market Defendant’s property, goods, and/or
13 services.

14 18. As demonstrated by the above screenshots, Defendant does not honor
15 consumer requests to opt-out of text message advertisements.

16 19. Indeed, Plaintiff attempted to opt-out of Defendant’s text message
17 solicitations by responding to Defendant’s messages numerous times with the word
18 “stop”, but instead of honoring the requests, Defendant continued its solicitation efforts.

19 20. Defendant sent at least two text marketing messages after Plaintiff’s initial
20 opt-out request.

21 21. Plaintiff is the regular user of the 9130 Number that received the above text
22 messages.

23 22. Plaintiff utilizes the cellular telephone number that received Defendant’s
24 calls for personal purposes and the number is Plaintiff’s residential telephone line and
25 primary means of reaching Plaintiff at home.

26 23. Upon information and belief, Defendant maintains and/or has access to
27 outbound transmission reports for all text messages sent advertising/promoting its
28 services and goods. These reports show the dates, times, target telephone numbers, and

1 content of each message sent to Plaintiff and the Class members.

2 24. Defendant's failure to honor opt-out requests demonstrates that Defendant
3 does not (1) maintain written policies and procedures regarding its text messaging
4 marketing; (2) provide training to its personnel engaged in telemarketing; and/or (3)
5 maintain a standalone do-not-call list.

6 25. Defendant's failure to (1) maintain the required written policies and
7 procedures, (2) provide training to its personnel engaged in telemarketing, (3) maintain a
8 standalone do-not-call list, and (4) honor consumer opt-out requests caused Plaintiff and
9 the class members harm as they continued to receive text message advertisements after
10 asking for those messages to stop.

11 26. Plaintiff and the Class Members revoked any consent they may have
12 previously provided to Defendant by replying with a "stop" or similar opt-out instruction
13 in response to Defendant's text messages.

14 27. Plaintiff and the Class Members terminated any business relationship they
15 may have previously had with Defendant by replying with a "stop" or similar opt-out
16 instruction in response to Defendant's text messages.

17 28. Defendant's text message spam caused Plaintiff and the Class members
18 harm, including violations of their statutory rights, trespass, annoyance, nuisance,
19 invasion of their privacy, and intrusion upon seclusion. Defendant's text messages also
20 occupied storage space on Plaintiff's and the Class members' telephones.

21 **CLASS ALLEGATIONS**

22 **PROPOSED CLASSES**

23 29. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23, on
24 behalf of Plaintiff and all others similarly situated.

25 30. Plaintiff brings this case on behalf of the Classes defined as follows:

26 **INTERNAL DO NOT CALL CLASS:** All persons within
27 the United States who, within the four years prior to the filing
28 of this Complaint through the date of class certification, (1)

1 were sent more than one text message within any 12 month
2 period, (2) regarding Defendant's goods, products or
3 services, (3) to said person's residential cellular telephone
4 number, (4) after making a request to Defendant to not
5 receive further text messages by replying with a "stop" or
similar opt-out instruction in response to Defendant's text
message(s).

6 31. Plaintiff reserves the right to modify the Class definitions as warranted as
7 facts are learned in further investigation and discovery.

8 32. Defendant and its employees or agents are excluded from the Classes.

9 **NUMEROSITY**

10 33. Upon information and belief, Defendant has sent text messages to more
11 than 50 persons after they opted out of Defendant's texts. The members of the Class,
12 therefore, are believed to be so numerous that joinder of all members is impracticable.

13 34. Identification of the Class members is a matter capable of ministerial
14 determination from Defendant's call records.

15 **COMMON QUESTIONS OF LAW AND FACT**

16 35. There are numerous questions of law and fact common to members of the
17 Class which predominate over any questions affecting only individual members of the
18 Class.

19 36. Among the questions of law and fact common to the members of the Class
20 are:

21 a. Whether Defendant sent text messages to Plaintiff and
22 the Class members;

23 b. Whether the purpose of Defendant's text messages
24 was to market its goods and services;

25 c. Whether Defendant continued to send text message
26 after opt-out requests;

27 d. Whether Defendant maintains the policies and
28 procedures required under section 64.1200(d);

e. Whether Defendants maintain an internal do-not-call list and instruct their employees on how to use the list; and

f. Whether Defendant is liable for damages, and the amount of such damages.

37. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant continues to send marketing text messages to consumers even after opt-out requests is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

38. Plaintiff's claims are typical of the claims of the Class Members, as they are all based on the same factual and legal theories.

PROTECTING THE INTERESTS OF THE CLASS MEMBERS

39. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class, and Plaintiff has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

PROCEEDING VIA CLASS ACTION IS SUPERIOR AND ADVISABLE

40. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

1 number on the do-not-call list at the time the request is made.
2 Persons or entities making calls for telemarketing purposes
3 (or on whose behalf such calls are made) must honor a
4 residential subscriber's do-not-call request within a
5 reasonable time from the date such request is made. This
6 period may not exceed thirty days from the date of such
7 request. If such requests are recorded or maintained by a
8 party other than the person or entity on whose behalf the
9 telemarketing call is made, the person or entity on whose
10 behalf the telemarketing call is made will be liable for any
11 failures to honor the do-not-call request. A person or entity
12 making a call for telemarketing purposes must obtain
13 a consumer's prior express permission to share or forward
14 the consumer's request not to be called to a party other than
15 the person or entity on whose behalf a telemarketing call is
16 made or an affiliated entity.

17 44. Under 47 C.F.R § 64.1200(e), the rules set forth in 47 C.F.R. § 64.1200(d)
18 are applicable to any person or entity making telemarketing calls or texts to wireless
19 telephone numbers.

20 45. Plaintiff and the Class Members made requests to Defendant not to receive
21 calls from Defendant.

22 46. Plaintiff and the Class Members revoked any consent they may have
23 previously provided Defendant by replying with a “stop” or similar opt-out instruction in
24 response to Defendant’s text messages.

25 47. Plaintiff and the Class Members terminated any business relationship they
26 may have previously had with Defendant by replying with a “stop” or similar opt-out
27 instruction in response to Defendant’s text messages. *See* 47 C.F.R. § 64.1200(f)(5)(i).
28 (A consumer's “seller-specific do-not-call request * * * terminates an established
business relationship for purposes of telemarketing and telephone solicitation even if the
subscriber continues to do business with the seller.”)

48. Defendant failed to honor Plaintiff and the Internal Do Not Call Class
members opt-out requests.

49. Defendant's refusal to honor opt-out requests is indicative of Defendant's failure to implement a written policy for maintaining a do-not-call list and to train its personnel engaged in telemarketing on the existence and use of the do-not-call-list.

50. Thus, Defendant has violated 47 C.F.R. § 64.1200(d).

51. Pursuant to section 227(c)(5) of the TCPA, Plaintiff and the Internal Do Not Call Class members are entitled to an award of \$500.00 in statutory damages, for each and every negligent violation.

52. As a result of Defendant's knowing or willful conduct, Plaintiff and the Internal Do Not Call Class members are entitled to an award of \$1,500.00 in statutory damages per violation.

53. Plaintiff and the Internal Do Not Call Class members are also entitled to and seek injunctive relief prohibiting Defendant's illegal conduct in the future, pursuant to section 227(c)(5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- a) An order certifying this case as a class action on behalf of the Class as defined above, and appointing Plaintiff as the representative of the Class and Plaintiff's counsel as Class Counsel;
- b) An award of statutory damages for Plaintiff and each member of the Class as applicable under the TCPA;
- c) An order declaring that Defendant's actions, as set out above, violate the TCPA;
- d) An injunction requiring Defendant to cease all text messages made in violation of the TCPA, and to otherwise protect the interests of the Class;
- e) An injunction requiring Defendant to comply with 47

1 C.F.R. § 64.1200(d) by (1) maintaining the required written
2 policies; (2) providing training to their personnel engaged in
3 telemarketing; and (3) maintaining a do-not-call list; and
4 f) Such further and other relief as the Court deems
5 necessary.

6 **JURY DEMAND**

7 Plaintiff hereby demands a trial by jury.

8 **DOCUMENT PRESERVATION DEMAND**

9 Plaintiff demands that Defendant take affirmative steps to preserve all records,
10 lists, electronic databases or other itemization of telephone numbers associated with
11 Defendant and the calls as alleged herein.
12
13

14 Dated: December 5, 2024

Respectfully submitted,

16 **IJH LAW**

17 By: /s/ Ignacio Hiraldo
18 Ignacio J. Hiraldo (State Bar No. 354826)
19 1100 Town & Country Road Suite 1250
20 Orange, CA 92868
21 E: ijhiraldo@ijhlaw.com
T: 657.200.1403

22 *Counsel for Plaintiff and Proposed Class*
23
24
25
26
27
28